JD–50–06
San Juan &
Caguas, PR

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

E.C. WASTE, INC. d/b/a WASTE MANAGEMENT DE PUERTO RICO

and

Cases 24-CA-9997
24-CA-10064

UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, IBT

Ana Ramos, Esq.,
for the General Counsel.
Luis R. Perez Giusti, Esq.,
Hato Rey, Puerto Rico,
for the Respondent.

DECISION

Statement of the Case

PAUL BOGAS, Administrative Law Judge. This case was tried in San Juan, Puerto Rico, on March 2, 2006. The Union de Tronquistas de Puerto Rico, Local 901, IBT (the Union) filed the initial charge on December 3, 2004, and amended that charge on February 7 and 23, 2005. The Union filed a second charge on March 30, 2005, and amended it on June 27 and July 28, 2005. The Director of Region 24 of the National Labor Relations Board (the Board) issued the consolidated complaint on October 31, 2005. The complaint alleges that E.C. Waste Inc. d/b/a Waste Management De Puerto Rico (the Respondent), committed violations of the National Labor Relations Act (the Act) during the approximately 1-month period between when employees at one of its facilities voted to be represented by the Union and when employees at another of its facilities voted in a subsequent representation election. According to the complaint, the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by threatening employees with reprisals for protected activity and by telling employees that it would be futile to bring people from outside the company to resolve their problems. The complaint further alleges that the Respondent violated Section 8(a)(5) and (1) by failing to bargain with the newly-certified Union before reducing the annual bonuses paid to employees at one facility, and violated Section 8(a)(3) and (1) by discriminatorily reducing those bonuses because the employees engaged in activities protected by the Act. The Respondent filed a timely answer in which it denied the substantive allegations of the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following findings of fact and conclusions of law.

Findings of Fact

I. Jurisdiction

The Respondent, a corporation with offices and places of business in San Juan and Caguas, Puerto Rico, is engaged in the residential removal and disposal of solid waste in various municipalities in the Commonwealth of Puerto Rico. In conducting these business operations, the Respondent annually purchases and receives goods and materials valued in excess of $50,000 at its places of business in Puerto Rico directly from enterprises located outside Puerto Rico. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background Facts

The Respondent is in the business of collecting and disposing of solid waste. It has a total of nine facilities in Puerto Rico, and, at the time of trial, the Union was the collective bargaining representative for employees at seven of those locations. This case involves two of the Respondent's facilities -- Coqui San Juan[1] (Coqui) and San Juan Transfer. On November 19, 2004, employees at Coqui voted to be represented by the Union, and on November 30, 2004, the Board certified the Union as the representative of a unit of approximately 100 employees there. The Coqui bargaining unit includes all the chauffeurs, helpers, mechanics, utility employees, tire repairmen and welders at that location. On December 14, 2004, employees at the San Juan Transfer facility also voted to be represented by the Union. The Board certified the Union as the representative of the unit at San Juan Transfer on December 23, 2004. The San Juan Transfer bargaining unit includes all drivers, utility employees and transfer station operators at that location.

At the time of the alleged violations, Jose Cardona was the Respondent's general manager, Rosario Pabon was the manager of the district that includes the Coqui and San Juan Transfer facilities, and Pablo de Jesus was the site manager for three of the Respondent's locations – including Coqui and San Juan Transfer.

B. November Meeting at Coqui Facility

In November, a few days after the Union prevailed in the election at Coqui, de Jesus held a meeting with a group of employees at that facility. De Jesus testified that his purpose was to inform employees that "there was an election and there was the results, but we needed to continue working as usual, giving services to our customers." Carlos Perez, an employee who attended the meeting, testified that de Jesus' presentation included statements that Perez found threatening. According to Perez's testimony on direct examination, de Jesus told the employees that "things were going to change after the Union was there," and that the employees would "cry crocodile tears for what [they had] done." Later, on cross-examination, Perez recounted different wording, stating that de

[1] In some instances, including in the complaint, the Coqui San Juan facility is referred to as the Caguas facility. There was uncontradicted testimony that the Respondent closed this facility for business reasons shortly before trial.

Jesus had said that employees would "cry blood tears" rather than "crocodile" tears. Perez also testified that de Jesus said he did not want any union delegates to come to his office until the collective bargaining agreement was negotiated.

De Jesus admitted that he "didn't want to have anybody . . . from outside dealing with the company's issues" and that it was "possible" he was disappointed that the Union had prevailed in the election, but he denied making the statement that employees would "cry blood tears" and the statement regarding union delegates. I conclude that the record does not establish that de Jesus more likely than not made the statements recounted by Perez. De Jesus testified in a confident manner about the November meeting and his testimony on that subject was free of significant inconsistencies. In addition, de Jesus' testimony that the purpose of the meeting was to remind the employees that they had to continue providing the usual level of service to their customers after the election was facially plausible, especially given that de Jesus is not accused of attempting to influence the Coqui employees prior to the election there. The General Counsel tried to use de Jesus' affidavit to impeach him, pointing out that in the affidavit de Jesus said that he did not "believe" he had made the disputed statements. Although de Jesus' denial in the affidavit may have been somewhat less emphatic than his denial at trial, those denials are essentially consistent, and I find that the affidavit language relied on by the General Counsel does not significantly diminish de Jesus' credibility on the subject. I did note that de Jesus had a tendency to hedge some of his answers on sensitive subjects, and this tendency detracted somewhat from my confidence in his truthfulness.[2]

Although I believe that Perez was a somewhat credible witness, I cannot conclude that his testimony regarding the alleged threats outweighs de Jesus' denials. I note, first, that Perez's account was vague. He testified that the November meeting lasted approximately 15 minutes, but he was able to recount nothing about what de Jesus said beyond the few, very brief, statements discussed above. Even with respect to those statements, Perez's account was inconsistent. As noted above, during direct examination he testified that de Jesus had said employees would cry "crocodile" tears, but on cross-examination he testified that the phrase was "blood" tears. Perez's demeanor also detracted somewhat from my confidence in his reliability. When I administered the oath to him, Perez shifted uncomfortably and averted his eyes. I recognize that Perez was a current employee at the time he gave testimony adverse to the Respondent, and that his testimony was therefore "given at considerable risk of economic reprisal, including loss of employment." *Shop-Rite Supermarket*, 231 NLRB 500, 505 fn. 22 (1977); see also *Flexsteel Industries*, 316 NLRB 745 (1995), enfd. 83 F.3d 419 (5th Cir. 1996) (Table). However the added credence that attaches to his testimony for that reason is insufficient to overcome the other factors, discussed above, which lead me to conclude that his account does not outweigh the account of de Jesus.[3]

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[2] See, e.g, Tr. 91-92 (When asked whether he was the one who initiated the November meeting, de Jesus first states that "It is possible, yes," but later indicates that he did, in fact, call the meeting.); Tr. 92 (When asked whether he was disappointed about the employees' vote in favor of the Union at Coqui, de Jesus responds, "It is possible, yes.").

[3] De Jesus and Perez were the only witnesses who were called to testify about the November meeting. Perez testified that a group supervisor was also present at the meeting. The record does not show whether that individual was a supervisor for purposes of the Act, or even whether he was still working for the Respondent at the time of trial. Under the circumstances, I cannot reasonably assume that the individual identified as a group supervisor was favorably disposed to the Respondent and I draw no adverse inference from the

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C. Bonuses Paid on December 3, 2004

Under the laws of Puerto Rico, the Respondent must pay an annual bonus to each employee who has worked the requisite number of hours during the period from October 1 of the prior year to September 30 of the current year. See 29 L.P.R.A. Sec. 501, et seq. The law requires payment of a minimum bonus amount, which the record indicates did not exceed $200 in the case of each of the Respondent's employees, and which the employer is required to disburse between December 1 and December 15 of each year. Prior to 2004, the Respondent has paid bonus amounts in addition to the legally required minimum to employees at the Coqui and San Juan Transfer facilities. Cardona, the Respondent's general manager, testified that he determined the size of these supplemental bonuses on the basis of the "economic situation" and "financial status of the moment." In 2002 and 2003 the Respondent disbursed to each employee a single bonus payment that included both the minimum bonus required by Puerto Rican law, and the supplemental bonus. Pursuant to this practice, the Respondent paid each qualifying employee at Coqui a bonus of $1050 in December 2002, and $1075 in December 2003. Qualifying employees at the San Juan Transfer facility received bonuses of between $1000 and $1100 in December of 2002 and 2003, but the record does not reveal whether the San Juan Transfer employees received exactly the same bonus amounts as the Coqui San Juan employees.

In 2004, the Respondent paid the bonuses to the Coqui employees on December 3 – during the approximately 1-month period between the election at Coqui and the election at San Juan Transfer. On this occasion, the Respondent's General Manager, Cardona, reduced the bonuses paid to employees at the Coqui facility, where the Union had recently prevailed, paying each employee a bonus of only $200. The testimony indicated that this amount was equivalent to the minimum bonus required by the laws of Puerto Rico, and that the supplemental bonus had been eliminated for the Coqui employees. Cardona and Wilma Figueroa, the Respondent's human resources manager, discussed this reduction in the Coqui bonuses before the reduction was implemented. At the same time, Cardona decided to pay the employees who were about to vote in the representation election at San Juan Transfer a bonus of $1100 each – an amount comparable to what was paid at both Coqui and San Juan Transfer in prior years and which included a supplemental bonus based, as in the past, on financial and economic factors.

At trial, Cardona admitted that the reason he treated the two groups of employees differently with respect to the bonus was that employees at Coqui had already voted to be represented by the Union, Tr. 67-68, but "the San Juan Transfer Station employees had not done any type of elections or whatsoever, so they were still basically a non-organized site," Tr. 69. He testified that productivity and profitability played no part in the decision to reduce the benefit at Coqui. Cardona testified, however, that his decision to reduce the bonus paid to the employees at Coqui was not "in retaliation" for those employees voting in favor of union representation, and that the Respondent had a "very good relationship with the Union." Tr. 68; but see *Waste Management de Puerto Rico*, 339 NLRB 262 (2003), enfd. 359 F.3d 36 (1st Cir. 2004) (*Waste Management I*) (The Respondent commits multiple violations of the Act during a

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Respondent's failure to call him or her. See *Electrical Workers Local (Teknion, Inc.)*, 329 NLRB 337, 337 fn.1 (1999) (adverse inference may be drawn when party fails to call a witness who may reasonably be assumed to be favorably disposed to the party); *International Automated Machines*, 285 NLRB 1122, 1122-1123 (1987), enfd. 861 F.2d 720 (6th Cir. 1988) (Table) (same). I note, moreover, that although the November meeting was attended by a number of other employees, none were called to corroborate either de Jesus' or Perez's account.

prior organizing campaign by the same Union.).[4] In what seemed to be an effort to further explain precisely how Union representation factored into the disparate treatment, Cardona stated that when the bonus was paid at Coqui, the Union had not presented the Respondent with a proposed collective bargaining agreement or otherwise initiated negotiations about the amount of the bonus. The Union made its first bargaining proposal regarding that unit on December 10, 2004.

Cardona's testimony that the bonuses were reduced for the Coqui employees because they had chosen to be represented by the Union was corroborated by the affidavit of Figueroa, the Respondent's human resources manager, who the Respondent admits is a supervisor and agent for purposes of the Act. Figueroa stated that the employees at Coqui received smaller bonuses than the employees at San Juan Transfer "because the Union had already been certified as the exclusive representative of the employees prior" to payment of the bonus and "we understood that the bonus should have been negotiated with the Union." She stated further that these were "the only reasons" why the employees of Coqui "received less bonus money," and that "economic losses" played no part in the decision.[5]

The Respondent did not provide the Union with notice or an opportunity to bargain before changing its practice with respect to bonuses for the Coqui employees, and paying those employees the reduced bonuses. In a letter to the Respondent dated December 7, Jose Budet, a representative with the Union, complained about the change, stating: "The present is to express our disagreement with the unilateral change regarding the Christmas Bonus, since we understand that the reason for this was because the workers chose us as their exclusive representative. Please contact the undersigned to discuss said situation." The Respondent received, but did not answer, Budet's letter. The Respondent did not subsequently communicate with the Union regarding the 2004 Coqui bonus payments.

D. December Meeting at San Juan Transfer Facility

In September 2004, the Respondent assigned Pabon to manage the district that included Coqui and San Juan Transfer. At the time he took this assignment, the organizational campaign had been underway at Coqui since June or July 2004 and the organizing campaign at San Juan Transfer was about to begin. In approximately early November 2004, Pabon reassigned many drivers at San Juan Transfer from the day shift to the night shift. Pabon testified that he ordered this change so that the drivers' work would not be hampered by daytime traffic. The drivers were unhappy about the change, and asked to meet with Pabon to discuss returning to the day shift, and also to express their concerns about truck maintenance. In early December – 1 week before the representation election at San Juan Transfer – Pabon met with San Juan Transfer employees in the lot where those employees parked their private vehicles. Pabon was accompanied at this meeting by de Jesus, and the Respondent's

[4] See also *Stark Electric*, 327 NLRB 518, 518 fn.1 (1999) (Board relies on the findings and evidence in recent cases against an employer as background in a subsequent case against the same employer.).

[5] The General Counsel presented the testimony of two Union officials – Luz Delia Perez and Jose Lopez – who reported that de Jesus told them that a larger bonus had been budgeted for the employees at Coqui, but that the amount had been reduced for reasons unknown to de Jesus. De Jesus denied making those statements. It is unnecessary for me to determine whether de Jesus made the disputed statements given Cardona's admission, corroborated by Figueroa, that the bonuses were reduced because the Union had become the collective bargaining representative of employees at Coqui.

maintenance manager, Abel Grievas.[6]

At the meeting, the parties discussed the shift change and the condition of the trucks. The drivers expressed the view that, if Pabon returned them to the day shift, they would actually become more productive because they would be happier. Pabon informed the employees that he was granting their request to return to the day shift and he also attempted to reassure them that he was addressing their concerns about truck maintenance. The witnesses for the two sides differ about what else was said at the meeting. The General Counsel called as witnesses two of the employees who attended the meeting – Roger Crespo and Elisamuel Delgado. One of those witnesses, Crespo, is also a union delegate. According to Crespo, Pabon asked the employees for a "vote of confidence," and said that they should not "bring in any outsiders" so that they "could solve things between us." At trial, Pabon was asked whether he had requested a vote of confidence in himself, and he responded, "I wouldn't say a vote confidence." According to Pabon, he had, however, said that he was putting himself "on the line" by granting the drivers' request regarding shifts. Pabon did not confirm or deny that he had used the language, recounted by Crespo, about "outsiders" and solving problems "between us." Although de Jesus and Delgado were called as witnesses, neither of them testified about this aspect of the meeting or corroborated either Pabon's or Crespo's account regarding it.

I credit Crespo's testimony that Pabon asked the drivers not to bring "outsiders" to the company so that they "could solve things between us." Crespo testified about this comment in a clear and certain manner and Pabon never specifically denied making it. Although I am given some pause by the fact that the General Counsel's witness, Delgado, did not testify regarding this statement, in the absence of a denial from Pabon or de Jesus I find that Crespo's unrebutted testimony is sufficient to establish that Pabon more likely than not made the statement. On the other hand, I cannot conclude that Pabon more likely than not asked the employees for a "vote of confidence." Neither Crespo's testimony that this was said, nor Pabon's denial, was corroborated or contradicted by evidence from documents or other witnesses. I observed no basis in either Pabon's or Crespo's demeanor to credit one over the other regarding the matter. Both testified in only rather general terms about the December meeting, but appeared reasonably confident in their accounts regarding the "vote of confidence" statement. Pabon and Crespo each had some interest in the outcome of this proceeding – Pabon because he was a manager alleged to have made the unlawful remark and Crespo because he was a delegate for the Union that filed the charge. On this record, I cannot conclude that Pabon made the "vote of confidence" comment.[7]

De Jesus also spoke at the December meeting. Crespo testified that, in the context of discussions about bringing "outsiders" to the facility, de Jesus commented: "[L]ook at the guys

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[6] This is how the maintenance manager's name is spelled in the official transcript. In its brief, the General Counsel states that the correct spelling of this individual's name is Able Rivas.

[7] The General Counsel has requested that I draw an adverse inference from the Respondent's failure to call Greivas who also attended the meeting. However, such an inference is only appropriate if the record provides a reasonable basis upon which to assume that Grievas was favorably disposed to the Respondent. See footnote 3, supra. The evidence here is too incomplete to justify such an assumption. Grievas was referred to in the record as the Respondent's "maintenance manager" at the time of the December 2004 meeting, but the evidence does not show that he had duties or responsibilities that would qualify him as a supervisor or manager for purposes of the Act, or even that he was still employed by the Respondent in any capacity at the time of the trial. For these reasons, I decline the General Counsel's invitation to draw an adverse inference from the Respondent's failure to call Grievas.

at Coqui. You're going to cry tears of blood." According to Crespo, de Jesus also referred to the new cars in the employee parking lot and said "[S]oon it'll be none." Delgado corroborated a portion of this testimony. Delgado stated that, during the meeting, de Jesus looked at the cars in the parking lot and said "[A]ll those cars . . . wouldn't be there anymore, wouldn't be seen there anymore." Delgado did not, however, testify about whether de Jesus had made the "tears of blood" remark. The Respondent's witness, Pabon, testified that he did not hear de Jesus "say or make reference to the cars parked in the parking lot," but Pabon did not testify about whether de Jesus had made the "tears of blood" comment. De Jesus himself testified that he did not "recall" making a comment to employees about the cars parked in the lot at the December meeting, but he was not asked whether he had made a comment regarding "tears of blood" at that meeting.[8]

On the basis of the record, I find that, during the December meeting at San Juan Transfer, de Jesus warned employees, "[L]ook at the guys at Coqui. You're going to cry tears of blood." Crespo testified about this in a confident and clear manner, and that testimony was unrebutted.[9] De Jesus himself never denied making the statement at the December meeting, and the record does not include testimony from Pabon that the statement was not made. I considered that Delgado, the General Counsel's other witness regarding the meeting, did not testify that the "tears of blood" statement was made, but he was never specifically asked about it, and certainly never testified that the statement was *not* made.

I also find that, at the same meeting, de Jesus looked out over the cars in the employee parking lot and made a statement indicating that those cars would soon be gone. Delgado testified to that statement in a clear manner. He was not shown to be a Union supporter or to have any personal stake in the outcome of this litigation. Moreover, his testimony regarding the comment was corroborated by Crespo. Although de Jesus and Pabon offered contrary testimony, their accounts were less clear and certain than those of Delgado and Crespo regarding the matter. De Jesus only denied that he "recalled" making such a statement. He never testified that he affirmatively recalled that he had *not* made such a statement during the December meeting. Moreover, de Jesus' recollection about the meeting was shown to be incomplete. For example, he did not recall truck maintenance being discussed, but that was a major topic at the meeting and witnesses for both sides remembered it being discussed. Pabon stated that he did not "hear" de Jesus "say or make reference to the cars parked in the parking lot," but he did not claim to have heard everything that de Jesus said. Moreover, Pabon and de Jesus – unlike Delgado -- each have a demonstrated personal stake in whether statements at the December meeting are found to be unlawful since both are alleged to have violated the Act during that meeting. On this record, I conclude that de Jesus more likely than not made a statement indicating that the cars parked in the lot would soon be gone.

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[8] De Jesus testified that he had not made a comment concerning "tears of blood," but that testimony related to the November meeting at Coqui, not to the December meeting at San Juan Transfer.

[9] I have not accepted certain other portions of Crespo's testimony. As the Board has recognized, nothing is more common in all kinds of judicial proceedings than to believe some, and not all, of a witnesses' testimony. *Excel Containers, Inc.*, 325 NLRB 17, 17 fn. 1 (1997); see also *American Pine Lodge Nursing*, 325 NLRB 98, 98 fn. 1 (1997) ("A trier of fact is not required to accept the entirety of a witness' testimony, but may believe some and not all of what a witness says."), enf. granted in part, denied in part, 164 F.3d 867 (4th Cir. 1999).

E. The Complaint Allegations

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act: in or about late November 2004 at the Caguas (Coqui) facility when de Jesus threatened employees with unspecified reprisals if they supported the Union; in or about early December 2004 at the San Juan Transfer facility when de Jesus threatened employees with plant closure and unspecified reprisals if they supported the Union; and in or about early December at the San Juan Transfer facility when Pabon told employees that it would be futile to bring people from the outside to resolve their problems. The complaint further alleges that the Respondent violated Section 8(a)(5) and (1) of the Act in December 2004 by reducing the annual bonuses paid to employees at Coqui without affording the Union notice or an opportunity bargain, and violated Section 8(a)(3) and (1) of the Act by discriminatorily reducing those bonuses because the employees joined, supported and assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage such activities.[10]

III. Analysis and Discussion

A. Alleged Unlawful Statements

The General Counsel alleges that de Jesus and Pabon made a number of unlawful statements to employees. The Respondent admits that both of these individuals were supervisors and agents of the company for purposes of the Act at the time they are alleged to have made the statements. The test to determine if a statement violates Section 8(a)(1) is whether "under all the circumstances" the remark "reasonably tends to restrain, coerce, or interfere with the employee's rights guaranteed under the Act." *GM Electrics*, 323 NLRB 125, 127 (1997). The test "does not depend on the motive or the successful effect of the coercion." Id.

The first allegation of an unlawful threat is based on statements that Perez testified de Jesus made to employees at Coqui during the meeting in November 2004. According to Perez, de Jesus told a group of employees that they were "going to cry tears of blood" because they had brought the Union in. For the reasons discussed above, I have found that the record does not establish that de Jesus more likely than not made this statement. Therefore, I will recommend dismissal of the allegation regarding statements by de Jesus to employees at Coqui in November 2004.

Next, the General Counsel alleges that, during the December 2004 meeting at San Juan Transfer, de Jesus threatened employees with adverse repercussions if they voted to make the Union their collective bargaining representative. The meeting took place a week prior to the scheduled representation election at that facility. In the context of discussions about that election, de Jesus told the employees "[L]ook at the guys at Coqui, you're going to cry tears of blood." I conclude that de Jesus' statement constitutes an unlawful threat in violation of the Act. The record shows that the Respondent had recently reduced the annual bonuses of employees at Coqui because those employees voted to be represented by the Union. Reasonable employees would conclude that de Jesus was threatening that employees at San Juan Transfer, like the employees at Coqui, would suffer adverse consequences if they made the Union their

[10] At the start of the trial, I granted the General Counsel's unopposed motion to amend the complaint by deleting paragraphs 10(b) and (c). The parties had reached a partial settlement agreement that resolved the allegations contained in those paragraphs.

collective bargaining representative in the upcoming election. Such a threat would tend to cause employees to fear that voting for the Union would lead to unspecified reprisals and unlawfully coerced those employees in the exercise of their Section 7 rights. See *Southeastern Motor Truck Lines Inc.*, 112 NLRB 601, 603-04 (1955) (Company official unlawfully coerced employees by, inter alia, threatening a few days before election that employee would "be sorry" if the union were successful.); see also *Ebenezer Rail Car Services, Inc*., 333 NLRB 167, 167 fn. 2 (2001) (A manager 's statement after union election victory that employee was "going to regret this all year" is a violation.) and *Azalea Gardens Nursing Center*, 292 NLRB 683, 686 (1989) (Statement that employees "would 'regret this day' clearly conveyed to them they could expect unspecified reprisal actions . . . for their having supported the Union.").

For the reasons discussed above, I find that the Respondent violated Section 8(a)(1) during the December 2004 meeting at San Juan Transfer, when de Jesus threatened employees with unspecified reprisals if they voted to make the Union their collective bargaining representative.[11]

The General Counsel also alleges that, during the December 2004 meeting, Pabon violated Section 8(a)(1) by making certain statements about "outsiders." As discussed above, Pabon asked the employees not to bring in "outsiders," so that the company and employees "could solve things between us." The General Counsel cites no specific authority for the proposition that such a statement is coercive or otherwise unlawful and, indeed, the remark may well be protected under Section 8(c) of the Act. I am given some pause by the fact that Pabon's statement was made 1 week before the representation election, and at the same meeting during which Pabon granted the employees' request for a change in shifts and also addressed complaints about truck maintenance. However, the record shows that the Respondent did not solicit the employee grievances about shifts and truck maintenance, nor did it control the timing of when employees raised them. Rather it was the employees themselves who requested the meeting with Pabon in order to discuss shifts and truck maintenance. Since the employees knew that the subject matter, and to a large degree the timing, of the meeting were their own doing, I would not expect them to find those circumstances intimidating or otherwise coercive. *See Lenkei Bros. Cabinet Co.*, 290 NLRB 1017, 1021 (1988) (employer's encouraging response to grievance at meeting prior to election was not a violation where employer did not initiate the meeting or ask for the grievance, but rather employee had vigorously pressed the grievance). Although Pabon made a reference to the election during the meeting, he was not shown to have said anything to suggest that the grant of the shift change, or any other benefit, was dependant upon, or in exchange for, an understanding that employees would vote against the Union in the upcoming election. Nor is he alleged to have promised that future employee requests would meet with favorable responses from the Respondent if the employees voted against union representation. The record does not show that Pabon had previously taken the position that he would not make the requested changes. I find that the record in this case provides insufficient grounds for concluding that employees would reasonably view Pabon's action as something other than a sensible response to their unsolicited expression of discontent and the appeal of their arguments.

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[11] Given my finding that de Jesus' comment regarding "tears of blood" at the December 2004 meeting constituted an unlawful threat of unspecified reprisals, I need not reach the issue of whether de Jesus' statement about the cars in the parking lot during the same meeting constituted an independent threat of unspecified reprisal since such a finding would be cumulative and would not affect the remedy. I do find that de Jesus' remark regarding the cars in the parking lot, although ominous-sounding, was too vague and ambiguous to constitute a specific threat of plant closure.

The complaint does not include an allegation that Pabon responded favorably to the employees' requests regarding shifts and truck maintenance for the unlawful purpose of inducing employees to vote against the Union in the upcoming election. *See NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964) (An employer violates the Act when it grants benefits "while a representation election is pending, for the purpose of inducing employees to vote against the union."). Nor did the General Counsel raise such an allegation at trial. Nevertheless, in its brief, the General Counsel argues that I should infer that Pabon's action had an improper motive because "when an employer institutes a new practice of soliciting employees[']grievances during a union campaign," a "compelling inference" arises that this was done in order to influence the election. Brief of General Counsel at pages 17-18. The Board considers multiple factors relevant to a determination about whether an employer granted a benefit for the purpose of influencing employees to vote against the union in an upcoming election. See *Holly Farms Corp.*, 311 NLRB 273, 274 (1993), enfd. 48 F.3d 1360 (4th Cir. 1995), affd. 517 U.S. 392 (1996).[12] Given that this issue was not raised prior to the General Counsel's post-trial brief, it is not surprising that little or no evidence was presented at trial regarding most of those factors. Moreover, contrary to the General Counsel's argument, the record does not show that the Respondent solicited grievances, or that it diverged from any prior practice regarding its treatment of employee complaints. As discussed above, the employees themselves had voluntarily raised the issues regarding shifts and truck maintenance, and had also requested the meeting with Pabon to discuss those issues. I conclude that the possibility of a connection between Pabon granting the employee requests and the upcoming representation election was not fully litigated, or even meaningfully explored, in this proceeding and I reach no determination about whether such a connection existed.

For the reasons discussed above, I conclude that the General Counsel has failed to show that the Respondent violated Section 8(a)(1) during the meeting at San Juan Transfer in December 2004, when Pabon asked employees not to bring "outsiders" into the company so that they could solve problems "between us." I will therefore recommend that this allegation be dismissed.

B. Reduction of Annual Bonus at San Juan Transfer

The General Counsel alleges that the Respondent violated Section 8(a)(5) and (1) of the Act when it reduced the annual bonus paid to employees at Coqui in 2004 without notifying the Union or affording the Union an opportunity to bargain over the change. An employer violates Section 8(a)(5) and (1) of the Act when it makes a unilateral change to an existing term or condition of employment where a union is newly certified and the parties have not yet reached an initial agreement or impasse. *NLRB v. Katz*, 369 U.S. 736 (1962); *Daily News of Los*

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[12] Those factors include: the size of the benefit conferred in relation to the stated purpose for granting it; the number of employees receiving it; how employees reasonably would view the purpose of the benefit; the timing of the benefit, *Perdue Farms*, 323 NLRB 345, 352-53 (1997), enf. denied in relevant part on other grounds 144 F.3d 830 (D.C. Cir. 1998); the employer's explanation for the timing of the benefit; prior statements by the employer indicating that the benefit would not be granted, *Lampi, L.L.C.*, 322 NLRB 502, 502-03 and 506 (1996), *Holly Farms Corp.*, 311 NLRB at 274; whether the grant of benefit was consistent with the employer's prior practice, *Lampi, L.L.C.*, 322 NLRB at 502-03, *Marine World USA*, 236 NLRB 89, 90 (1978); and the employer's knowledge that the benefit involved was an important issue in the union organizing effort, *Huck Store Fixture Co.*, 334 NLRB 119, 123 (2001), enfd. 327 NLRB 528 (7th Cir. 2003).

Angeles, 315 NLRB 1236 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997); see also *Central Maine Morning Sentinel*, 295 NLRB 376, 379 (1989) (Board gives particular scrutiny to situations where an employer proposes to change terms of employment during initial contract negotiations). The bargaining obligation extends to changes an employer makes with respect to bonuses. *The Philadelphia Coca-Cola Bottling Co.*, 340 NLRB 349 (2003), enfd. 112 Fed.Appx. 65 (D. C. Cir. 2004); *Sykel Enterprises*, 324 NLRB 1123 (1997); *TCI of New York*, 301 NLRB 822, 824 (1991); *Specialty Steel Treating, Inc.*, 279 NLRB 670 (1986); *Harowe Servo Controls, Inc*. 250 NLRB 958, 959 (1980); *Laredo Coca Cola Bottling Co.*, 241 NLRB 167, 173-74 (1979), enfd. 613 F.2d 1338 (5th Cir. 1980), cert. denied 449 U.S. 889 (1980).

The record shows that, prior to the Union's certification at Coqui, the Respondent had an established practice of granting employees at Coqui and San Juan Transfer bonus payments in addition to the amounts required under Puerto Rican Law, with the amounts of such supplemental bonus payments based on the "economic situation," and "financial status of the moment." Cardona himself testified to that effect and his testimony was consistent with statements by others and with documentation regarding bonuses paid in the past.[13] On December 3, 2004 -- 3 days after the Union was certified at Coqui, but before the parties had reached an initial agreement or even begun negotiations – Cardona eliminated the supplemental bonus for employees at Coqui. Cardona admitted, and Figueroa confirmed, that Cardona made the decision to do this without regard to the economic and financial factors that he usually considered when determining the amounts of supplemental bonuses in the past. Rather, Cardona's decision was based solely on the fact that the Union had recently become the collective bargaining representative of Coqui employees and had not yet made a proposal regarding the bonuses. Cardona took this action without giving the Union any prior notice or opportunity to bargain. Unlike at Coqui, Cardona followed its established practice at San Juan Transfer and granted the employees there substantial supplemental bonus amounts in December 2004. Prior to 2004, employees at Coqui and San Juan Transfer had received the same, or nearly the same, bonus amounts, but in 2004 employees at Coqui received bonuses of only $200 while the soon-to-vote employees at San Juan Transfer received bonuses of $1100.

The Respondent's obligation during the period after certification and prior to an initial agreement or impasse was to continue its established practice of paying supplemental bonus amounts to Coqui employees based on economic and financial circumstances, and to consult with the Union about the amounts and timing of those benefits. See *Hoffman Sec., Ltd.*, 315 NLRB 275, 277 (1994).[14] Based on the record here, I conclude that the Respondent violated its bargaining obligations under the Act by discontinuing its supplemental bonus practices without first reaching an initial agreement or impasse with the newly certified Union, and by failing to consult with the Union about the amount and timing of the supplemental bonus payments. The Respondent argues that it was entitled to unilaterally change its practice

[13] Annual bonuses are sufficiently regular or consistent to become an established term and condition of employment if paid in two consecutive years. *Sykel Enterprises*, 324 NLRB at 1125; *Laredo Coca Cola,*, 241 NLRB at 174. In the instant case, documentary evidence regarding the Respondent's practice with respect to bonuses was introduced for 2002 and 2003. The testimony indicated that the practice extended beyond those years.

[14] **"'**What is required is a maintenance of preexisting practices, i.e. the general outline of the program; however, the implementation of that program (to the extent that discretion has existed in determining the amounts or timing of the [benefit]) becomes a matter as to which the bargaining agent is entitled to be consulted.'" *Hoffman Sec., Ltd.*, 315 NLRB at 277, quoting *Oneita Knitting Mills*, 205 NLRB 500, 500 fn. 1 (1973).

regarding supplemental bonuses and reduce the bonus for essentially three reasons. First, the Respondent argues that a bonus is a "gift" rather than a term or condition of employment, under the Board's decision in *Stone Container Corp.*, 313 NLRB 336 (1993), as long as the bonus is not related to performance or production standards, conditions in the industry, or similar matters. Respondent's Brief at 10-11. Even assuming that the Respondent states the proper standard, the Respondent has failed to show that the bonuses at-issue were not related to such matters. To the contrary, Cardona admitted that the Respondent's past practice was to determine the supplemental bonus based on the "economic situation" and "financial status" -- factors that, on the face it of it, are encompassed by "conditions in the industry" and similar matters. The Board has found that an employee bonus is a term or condition of employment where it was based on factors such as the employer's success in meetings its goals for obtaining new subscribers, see *TCI of New York*, 301 NLRB at 822 and 824, and a review of the employer's financial books, see *Sykel Enterprises*, 324 NLRB at 1124. Moreover, the bonus program in *Stone Container* was far less substantial than the Respondent's, and, therefore, it was more plausible in that case than in the instant one to describe the bonuses as "gifts rather than terms and conditions of employment." *Stone Container*, 313 NLRB at 337. The Christmas bonus in *Stone Container* was a $20 certificate. Such a token program is not comparable to the supplemental bonus payments of approximately $900 per employee that the Respondent eliminated here. The Respondent's employees would reasonably view their supplemental bonuses as a significant element of compensation, and the Board has repeatedly found that such bonuses are terms and conditions of employment that cannot be adopted, changed, or eliminated without bargaining. See, e.g., *The Philadelphia Coca-Cola Bottling Co.*, supra; *Sykel Enterprises*, supra; *TCI of New York*, supra; *Specialty Steel Treating, Inc.*, supra; *Harowe Servo Controls, Inc*., supra; *Laredo Coca Cola*, supra.

Second, the Respondent argues that it did not have to bargain with the Union over the change in its bonus practices because, under the laws of Puerto Rico, employees qualified for the mandatory bonus in December 2004 based on service from October 2003 to September 2004 – a period when the Union did not yet represent employees. This argument is frivolous. First of all, what is at-issue in this case is the supplemental bonus that the Respondent had a practice of paying *over and above* the bonuses required by Puerto Rican law. The record and the provisions of local law cited by the Respondent do not show that such supplemental bonus payments were tied to the Coqui employees' service during the pre-certification period of time. More importantly, the Respondent cites no authority for the notion that when an employer wishes to make a change to a mandatory subject of bargaining after a Union is certified, the employer need not bargain over the change if the post-certification application of the existing practice is dependant in some way on the employees' pre-certification tenure. It is not surprising that the Respondent cites no authority for this curious proposition since such authority would be inimical to the numerous cases requiring an employer to bargain with a newly certified union before making changes to a variety of practices – e.g., merit pay and seniority policies -- even though the benefits that employees receive under such practices are affected by their pre-certification periods of service. See, e.g., *Hoffman Sec., Ltd*., 315 NLRB at 277 (change in practice regarding merit increases is a mandatory subject of bargaining in negotiations for initial contract) and *Harowe Servo Controls*, Inc. 250 NLRB at 1051 (change in seniority policy is mandatory subject of bargaining in negotiations for an initial contract).

Third, the Respondent argues that it was free to change its practice regarding the employees' supplemental bonuses because at the time the change was made the Union had not yet initiated bargaining regarding that subject. It is hard to understand what the Respondent is getting at with this argument, and the Respondent identifies no supporting authority or labor law doctrine to help clarify the matter. If the Respondent's contention is that the Union waived bargaining over the subject, that contention is without merit. The party

claiming that a waiver has occurred bears the burden of showing that the union clearly and unmistakably relinquished its right to bargain over the subject matter. *Bath Iron Works Corp.*, 345 NLRB No. 33 at 3 (2005); *TCI of New York*, 301 NLRB at 824; *Twin City Garage Door Co*., 297 NLRB 119, 128 (1989). Under Board law, such a showing cannot be made here because the Union did not have clear notice of the Respondent's intent to change the past practice regarding supplemental bonuses and reduce the size of the bonuses paid. *Sykel Enterprises, Inc.*, 324 NLRB at 1123 (In the absence of a clear notice of an intended change to a past practice, there is no basis to find that a union waived its right to bargain over the change.). Moreover, the Respondent does not claim that the Union expressly waived bargaining over the bonus program, nor does it point to behavior by the Union or other circumstances from which a waiver could "clearly and unmistakably" be implied. Indeed, the facts preclude any such implication. Within a few days of when the Respondent implemented the previously unannounced change to its past practice regarding supplemental bonuses, the Union sent a letter to the Respondent complaining about the unilateral change and asking to discuss it. The Respondent never responded to that letter, never indicated that the 2004 supplemental bonuses were "on hold" pending negotiations, and never communicated further regarding those bonuses. The Respondent protests that the Union had not yet provided a proposal regarding bonuses when the company made the change, but the Respondent implemented that change only 3 days after the Union was certified as the collective bargaining representative of employees at Coqui. Obviously, one cannot conclude that the Union had waived bargaining over the employees' terms and conditions of employment, including the bonus program, simply because it did not initiate bargaining within that brief period of time.

The Respondent may also be suggesting that it had no choice but to eliminate the supplemental bonus because it was required under the Act to negotiate the amount of any such bonus with the Union before paying it and such negotiations had not begun, or could not be completed, prior to the deadline established by the laws of Puerto Rico for the payment of the annual mandatory bonus. If this is what the Respondent is arguing, such an argument has multiple flaws. First, the local law provisions cited by the Respondent make no mention of the supplemental bonus program at issue here. Those provisions require the Respondent to pay the mandatory minimum bonus during the period from December 1 to 15, but do not require that any additional bonus amounts the Respondent has a practice of paying must be disbursed during the same period. The Respondent has not shown that local law prohibited it from responding to the Union's December 7 letter by meeting its obligation under federal law to consult with the Union regarding the timing and amount of the supplemental bonus, even if such negotiations might not conclude by December 15. Thus, the Respondent is not backed into the corner it appears to be trying to paint itself.

Even assuming that the Respondent was compelled to act with respect to the supplemental bonus at the same time as the mandatory bonus, the Respondent was still required to give the Union notice and an opportunity to bargain regarding the change. The Board has stated that when a change involves "a discrete event that occurs every year at a given time, and negotiations for a first contract will be ongoing at that time," the Respondent need not wait till an overall impasse is reached, but still has an obligation to give the Union "notice and an opportunity to bargain" regarding the change. *TXU Electric Co.*, 343 NLRB No. 132, slip op. at 4 (2004).[15] The Respondent violated that duty when it unilaterally discontinued its established method for determining the amount of the supplemental bonus at Coqui, and reduced the amount of the bonus, without giving the Union any notice or opportunity to bargain.

[15] The slip opinion number originally appearing on the *TXU Electric Co.*, decision was 343 NLRB No 137. Subsequently, this was corrected to read 343 NLRB No. 132.

For the reasons discussed above, I conclude that the Respondent violated Section 8(a)(5) and (1) in December 2004 by changing its practice regarding the annual supplemental bonuses paid to employees at Coqui, and reducing the amounts of those bonuses, without notifying the Union or affording a reasonable opportunity to bargain over the change.

The General Counsel also alleges that the Respondent discriminated in violation of Section 8(a)(3) and (1) by reducing the bonuses of the employees at Coqui because those employees had selected the Union as their bargaining representative. The Coqui employees engaged in activity protected by Section 7 of the Act when they elected the Union as their collective bargaining representative.[16] In this case, the record establishes that, because the employees at Coqui engaged in that protected activity, the Respondent changed its practice regarding annual supplemental bonuses, dramatically reducing the bonus payments the Coqui employees received. Cardona himself admitted under oath that the reason he made the change at Coqui was that the Union had become the collective bargaining representative of employees there. He stated, moreover, that the reason he had taken this action at Coqui, but spared the San Juan Transfer employees a similar reduction, was that the latter group had not voted to be represented by the Union. The Respondent has not claimed that any nondiscriminatory reason would have caused it to reduce the bonus payments at Coqui even absent the employees' protected activities. Nor has it shown that the employees at Coqui did anything that removed their activities from the protections of the Act. See *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964).[17]

To argue that its action was not discriminatory, the Respondent relies on *Phelps Dodge Mining Co. v. NLRB*, 22 F.3d 1493, 1498 (10th Cir. 1994), in which the U.S. Court of Appeals for the Tenth Circuit held that, absent an unlawful motive, the granting of benefits to organized employees, but not to represented employees, does not, standing alone, violate the Act. See also *Sun Transport, Inc.*, 340 NLRB 70, 72 (2003). That principal is inapposite here because the evidence did show an unlawful motive. As stated above, the Respondent admitted that its

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[16] Section 7 expressly provides that "[e]mployees shall have the right . . . to bargain collectively through representatives of their own choosing." See also, *Waste Management I*, supra (employee's decision to vote for union representation was protected activity and employer's discharge of the employee in response violated Section 8(a)(3)).

[17] Since the employer admits that it reduced the bonuses of the Coqui employees based on protected activity, the burden shifting analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Corp.*, 462 U.S. 393 (1983), is inapplicable here. See *Allied Aviation Fueling of Dallas, LP*, 347 NLRB No. 22, slip op. at 1 fn.2 (2006). At any rate, even under the *Wright Line* analysis a violation is established since the record clearly shows that the Coqui employees engaged in protected activity, that the Respondent was aware of those activities, and that the Respondent harbored antiunion animus. Antiunion animus is shown both by Cardona's admission that he took the action he did because of the employees' protected activity and by de Jesus' unlawful statements at the December 2004 meeting. I also note that the Respondent was found to have committed violations of Section 8(a)(1) and 8(a)(3) of the Act in a prior case involving organizing efforts by the same Union. *Waste Management I*, supra; see also *Stark Electric*, supra (Board considers violations found against employer in prior case as background in subsequent proceeding against the same employer). The Respondent has not proffered any nondiscriminatory reason that it claims would have led it to take the same action with respect to the bonuses of employees at Coqui even if those employees had not engaged in the protected activity.

motivation for abandoning the company's practice with respect to bonuses for the Coqui employees was that those employees had made the Union their representative. Moreover, Figueroa, the human resources official who Cardona consulted before making the change, has a history of unlawfully threatening to "bargain from zero" with "no paid benefits," if employees elect to be represented by the Union. See *Waste Management I*, 339 NLRB at 263 (Figueroa and another official of the Respondent violate Section 8(a)(1) by threatening that if employees select the Union they would be bargaining from zero with no paid benefits.); see also *Stark Electric*, 327 NLRB at 518 fn.1 (Board relies on the findings and evidence in recent cases against an employer as background in a subsequent case against the same employer.). The evidence indicates that, in the instant case, the Respondent was demonstrating its intention to make good on such threats, and to do so without bargaining. Indeed, shortly after reducing the amount of the supplemental bonus for Coqui employees to zero, de Jesus alluded to the Respondent's treatment of the Coqui employees in an effort to coerce employees at San Juan Transfer to vote against union representation. I conclude that unlawful motive is amply demonstrated in this instance.

For the reasons discussed above, I find that the Respondent discriminated in violation of Section 8(a)(3) and (1) when, in December 2004, it changed its practice regarding the bonuses of employees at Coqui and reduced the bonus payments the Coqui employees received because those employees had engaged in protected activity by voting to make the Union their collective bargaining representative.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent interfered with employees' exercise of Section 7 rights in violation of Section 8(a)(1) of the Act during the December 2004 meeting with employees at its San Juan Transfer facility, by threatening employees with unspecified reprisals if they voted to make the Union their collective bargaining representative.

4. The Respondent violated Section 8(a)(5) and (1) of the Act in December 2004 by changing its practice regarding the annual supplemental bonuses paid to employees at its Coqui facility, and reducing the bonuses received by employees, without notifying the Union or affording a reasonable opportunity to bargain over the change.

5. The Respondent discriminated in violation of Section 8(a)(3) and (1) when, in December 2004, it changed its practice regarding the bonuses of employees at Coqui and reduced the bonus payments the Coqui employees received because those employees had engaged in protected activity by voting to make the Union their collective bargaining representative.

6. The Respondent was not shown to have committed the other violations alleged in the complaint.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In addition to the usual cease-and-desist order and other affirmative relief, I recommend that the Respondent be ordered to make the unit employees at its Coqui facility whole for the loss of earnings they suffered as a result of the Respondent's unlawful, unilateral, and discriminatory change to its established practice regarding annual supplemental bonuses. The backpay is to be augmented by interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

There was uncontradicted testimony at trial that the Respondent had closed its Coqui San Juan facility. I will therefore recommend that the Respondent be required to mail a copy of the attached notice marked "Appendix" to all employees who it employed at the Coqui San Juan facility at any time since the onset of the unfair labor practices found in this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[18]

ORDER

The Respondent, E.C. Waste Inc., d/b/a Waste Management de Puerto Rico, of San Juan and Caguas, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with reprisals for engaging in activities in support of a union or other protected activities.

(b) Unilaterally implementing any changes to its annual supplemental bonus program for bargaining unit employees and/or reducing the annual bonuses paid to those employees without providing the Union de Tronquistas de Puerto Rico, Local, 901, IBT (the Union), with adequate prior notice and an opportunity for bargaining.

(c) Discriminatorily implementing any changes to the annual supplemental bonus program for bargaining unit employees and/or reducing the annual bonuses paid to those employees because employees engaged in protected activity, and for the purpose of discouraging such activity.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order rescind the unlawful, unilateral, and discriminatory change it implemented in December 2004 to the annual supplemental bonus

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

program for bargaining unit employees at the Coqui San Juan facility.

(b) Make employees who were part of the bargaining unit at the Coqui San Juan facility in December 2004 whole for the loss in earnings they suffered as result of the unlawful change to the supplemental bonus program and the reduction in the amounts of employees' bonuses.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its San Juan Transfer facility in San Juan, Puerto Rico, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 3, 2004.

(e) Within 14 days after service by the Region, mail copies of the attached notice marked Appendix, at its own expense, to all current and former employees who were employed by the Respondent at its Coqui San Juan facility at any time since December 3, 2004. The notice shall be mailed to the last know address of each of the employees after being signed by the Respondent's authorized representative.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(g) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., July 19, 2006.

Paul Bogas
Administrative Law Judge

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

JD–50–06
San Juan &
Caguas, PR

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten you with reprisals for engaging in activities in support of a union or other protected activities.

WE WILL NOT implement changes to the annual supplemental bonus program and/or reduce the amount of your annual supplemental bonus without providing the Union de Tronquistas de Puerto Rico, Local, 901, IBT (the Union), with adequate prior notice and an opportunity for bargaining.

WE WILL NOT discriminatorily implement any changes to the annual supplemental bonus program and/or reduce the annual bonuses paid to you under that program because you engaged in protected activities and for the purpose of discouraging such activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, rescind the unlawful, unilateral, and discriminatory change we made in 2004 to the annual supplemental bonus program for unit employees at the Coqui San Juan facility.

WE WILL make employees who were part of the bargaining unit at the Coqui San Juan facility in December 2004 whole for the loss in earnings they suffered as a result of the Respondent's unlawful change to the supplemental bonus program and the reduction in employees' bonuses.

E.C. WASTE, INC. d/b/a WASTE MANAGEMENT DE PUERTO RICO

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

525 F. D. Roosevelt Avenue, La Torre de Plaza, Suite 1002

San Juan, Puerto Rico 00918-1002

Hours: 8:30 a.m. to 5 p.m.

787-766-5347

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 787-766-5377.